IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 904 OF 1988

The State of Maharashtra ...Appellant
(Orig.Opponent)

V/s.

Rameshchandra Aba Patil)
(since deceased through)
his Legal heirs):-)
)
1. Shankar Rameshchandra Patil,)
Son, Age 45, At Post Aarale,)
Tal.Shirala, Dist.Sangli.)
)
2. Shamrao Rameshchandra Patil,)
Son, Age : 37,)
At Post : Aarle, Tal.Shirala,)
Dist-Sangli.)
)
3. Uttam Rameshchandra Patil,)
Son, Age 31,)
At Post Aarla, Tal.Shirala,)
Dist-Sangli.)
)
4. Kalatai Vishwas Mohite,)
Daughter, Age 40,)
At Post Nadhawade, Tal.Shirale,)
Dist-Sangli.)
)
5. Shalan Jaisingh Patil,)
Daughter, Age 28,)
At Post Sondoli, Tal.Shahuwadi,)
Dist-Kolhapur.)
)
6. Malan Baburao Patil,)
Daughter, Age : 25,)
At Post Sonawade, Tal.Shirale,)
District : Sangli.)
)
7. Balakabai Rameshchandra Patil, wife,)
Since deceased through her legal heirs :)
)
7-1) Shankar Rameshchandra Patil,)
R/o. Aarle, Tal.Shirala,)

Dist.Sangli,)
7-2) Shamrao Rameshchandra Patil, Son)
R/o. Aarle, Tal.Shirala,)
Dist.Sangli,)
7-3) Uttam Rameshchandra Patil, Son,)
R/o. Aarle, Tal.Shirala,)
Dist.Sangli,)
7-4) Kalatai Vishwas Mohite,)
Daughter,)
R/o.Nadhawade, Tal.Shirala,)
Dist.Sangli,)
7-5) Shalan Jaisingh Patil,)
Daughter,)
R/o.Sandoli, Tal.Shahuwadi)
Dist.Kolhapur.)
7-6) Malan Baburao Patil, Daughter,)
R/o.Sonawade, Tal.Shirala,)
Dist.Sangli,)...Respondents
(Orig.Claimants)

Mr.Bharat Mehta, AGP for the Appellant.
Mrs.S.S. Deshpande for the Respondents.

CORAM : V.M. KANADE, J.

DATED : OCTOBER 8, 2007

ORAL JUDGMENT :-

. Heard Shri Mehta, learned APP for the State and Mrs.Deshpande, learned Counsel for the respondents.

2. The State is challenging the award passed by the Civil Judge, Senior Division, Sangli, in Land Acquisition Case No.16/82. Brief facts in nutshell are that land belonging to the claimant was acquired for Chandoli Irrigation Project, Village Arale, Dist.

Sangli. The award was passed on 30.10.1980. The Reference Court awarded additional compensation of Rs.17,892/-.

3. The learned APP has taken me through the judgment and order of the trial Court and also the evidence adduced. After having perused the order and the evidence, in my view, there is no infirmity in the additional compensation which is awarded by the trial Court. Shri Mehta, learned APP for the State submits that the additional compensation of 12% per annum which has been granted as per the provisions of Section 23(1-A) of the Act in view of the amendment made in 1982 would not be available to the claimant since the award was passed prior to amendment of Section 23(1-A). In support, he has relied on the judgment in the case of **Kashiben Bhikabai and others v/s. Special Land Acquisition Officer and another, reported in (2002) 2 SCC 605**. The Apex Court in para 17 of the said judgment has observed as under :-

"Counsel appearing for the claimants contended

that the claimants would be entitled to an additional compensation @ 12% as provided under Section 23(1-A) of the Act. This contention cannot be accepted in view of a Bench decision of this Court in Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama (1990) 1 SCC 277 which held that additional compensation under Section 23(1-A) of the Act would not be available to a claimant in which the acquisition proceedings commenced and the award was made by the Collector prior to 30-4-1982. If the Collector made the award before 30-4-1982 then the additional amount under Section 23(1-A) cannot be awarded. The pendency of the acquisition proceedings on 30-4-1982 before the Collector was essential for attracting the benefit under Section 23(1-A) of the Act. It was held: (SCC pp.286-87, para 21)

> "21. Entitlement of additional amount provided under Section 23(1-A) depends upon pendency of acquisition proceedings as on 30-4-1982 or commencement of acquisition proceedings after that date. Section 30 sub-section (1)(a) provides that additional amount provided under Section 23(1-A) shall be applicable to acquisition proceedings pending before the Collector as on 30-4-1982 in which he has not made the award before that date. If the Collector has made the award before that date then, that additional amount cannot be awarded. Section 30 sub-section (1)(b) provides that Section 23(1-A) shall be applicable to every acquisition proceedings commenced after 30-4-1982 irrespective of the fact whether the Collector has made an award or not before 24-9-1984. The final point to note is that Section 30 sub-section (1) does not refer to court award and the court award is used only in Section 30 sub-section (2)."

No judgment taking a contrary view to the above-referred case was cited before us. Accordingly, it is held that the appellants would not be entitled to the additional compensation provided under Section 23(1-A) of the Act."

4. The ratio of the said judgment, in my view, squarely apply to the facts of the present case and therefore, the claimant would not be entitled to get further compensation at the rate of 12% per annum which comes to Rs.10,650/-.

5. Appeal is partly allowed and the said amount of Rs.10,650/- is deducted from the amount awarded by the Reference Court. Rest of the award is confirmed.

6. First Appeal is partly allowed in the above terms. Under the circumstances, there shall be no order as to costs.

(V.M. KANADE, J.)